



**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Initially, claimant maintains the Board does not have the jurisdiction to review the preliminary hearing Order For Medical Treatment as the issue presented to the ALJ was claimant's entitlement to medical treatment, specifically dental treatment. K.S.A. 44-534a restricts the jurisdiction of the Board to consider appeals from preliminary hearing orders to the following issues:

- (1) Whether the employee suffered an accidental injury;
- (2) Whether the injury arose out of and in the course of the employee's employment;
- (3) Whether notice is given or claim timely made;
- (4) Whether certain defenses apply.

These issues are considered jurisdictional and subject to review by the Board upon appeals from preliminary hearing orders. The Board can also review a preliminary hearing order entered by an ALJ if it is alleged the ALJ exceeded his or her jurisdiction in granting or denying the relief requested.<sup>1</sup>

A contention that the ALJ has erred in his finding that the evidence showed a need for medical treatment is not an argument the Board has jurisdiction to consider. And a contention that the ALJ erred in finding the evidence established claimant is entitled to temporary total disability compensation is not an argument the Board has jurisdiction to consider. K.S.A. 44-534a grants authority to an ALJ to decide issues concerning the furnishing of medical treatment, the payment of medical compensation and the payment of temporary total disability compensation.

But in this instance, the issue raised was whether claimant's current condition and need for dental treatment was caused by the work-related accidental injury. The undersigned Board Member concludes the Board does have jurisdiction to review the preliminary hearing issue of whether an injured worker's symptoms, conditions or injury stem from the work-related accident as that issue is, in essence, tantamount to whether a worker has sustained an injury that arises out of and in the course of employment.

---

<sup>1</sup> See K.S.A. 44-551.

Claimant was employed as a truck driver for respondent. On December 9, 2008, claimant swerved to avoid a collision, went off the road and then his truck rolled over three times. He suffered a broken back and head injuries.

On February 19, 2009, Dr. Raymond Grundmeyer performed a five-level thoracic spine fusion from T5 through T10. Claimant was also treated by a pain specialist, Dr. Scott Anthony. In August 2010, claimant had a second back surgery which was performed by Dr. Frank Tomecek. The doctor fused L5-S1 vertebrae. Claimant continues to be off work due to the accidental injuries. He has continuously taken pain medication since the accident.

Claimant testified that he was not taking any pain medications or illicit drugs before his accidental injury on December 9, 2008. Since his accidental injury, claimant has been prescribed narcotic pain medication. In July 2010, claimant was taking 30 milligrams of Oxycontin three times a day, 350 milligrams of Soma three times a day, 300 milligrams of Gabapentin, a Neurontin, three times a day and Celexa once a day.

Claimant described the main side effects from the drugs as including sleeplessness, dry mouth and constipation. Claimant testified that he did not have any problems with dry mouth before his accident. He regularly received dental treatment and preventive care as a child. But now claimant has problems with his teeth breaking apart. And his teeth are causing him a lot of pain. Claimant testified that he has four or five teeth that are broken or coming apart.

Claimant testified he first saw Dr. Wrany Southard, a dentist, on September 17, 2010, and that he has seen him three times. On one visit he had a tooth pulled. Claimant requests that Dr. Southard be authorized and provide dental treatment.

In a letter "To Whom It May Concern", Dr. Southard opined that it is highly probable that the high levels of oxycontin could have caused claimant's dental problems. The dentist noted:

Patient, Kenneth R. Ruff, Jr., was first seen in my office on September 17<sup>th</sup>, 2010 and presented with teeth that have been badly damaged. According to patient he did not have problems with his teeth until sometime after his accident in 2008. It is highly probable that high levels of oxycontin (30 mg tid) could have caused this problem with his dentition in my professional opinion. I practice on many patients who present with this same problem whether it be legal/illegal drugs and have been restoring teeth like these for over a decade.<sup>2</sup>

---

<sup>2</sup> P.H. Trans., Cl. Ex. 2.

Respondent admitted that claimant suffered an accidental injury on December 9, 2008. But respondent argues claimant's need for dental treatment is not related to claimant's work-related injury.

Every direct and natural consequence that flows from a compensable injury, including a new and distinct injury, is also compensable under the Workers Compensation Act. In *Jackson*<sup>3</sup>, the Court held:

When a primary injury under the Workmen's Compensation Act is shown to have arisen out of the course of employment every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury. (Syllabus 1).

Claimant argues that Dr. Southard's opinion establishes that his current dental problems are a natural consequence of his compensable injury as the narcotic pain medication taken for the compensable injury caused the current damage to his teeth. This Board member disagrees.

In this instance, the medical evidence claimant has produced regarding a connection between his dental condition and the accident of December 9, 2008, is the letter from Dr. Southard. Dr. Southard simply states that the use of Oxycontin "could" have caused claimant's dental problems not that it is more probable than not. The opinion was not expressed within a reasonable degree of medical probability and the claimant has failed to meet his burden of proof that his dental condition is related to the underlying accidental injuries.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>4</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2010 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.<sup>5</sup>

**WHEREFORE**, it is the finding of this Board Member that the Order of Administrative Law Judge Brad E. Avery dated December 15, 2010, is reversed.

**IT IS SO ORDERED.**

---

<sup>3</sup> *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

<sup>4</sup> K.S.A. 44-534a.

<sup>5</sup> K.S.A. 2010 Supp. 44-555c(k).

Dated this \_\_\_\_\_ day of March, 2011.

---

HONORABLE DAVID A. SHUFELT  
BOARD MEMBER

c: Charles W. Hess, Attorney for Claimant  
Terry J. Torline, Attorney for Respondent and its Insurance Carrier  
Brad E. Avery, Administrative Law Judge